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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 73 of the) RM No. 9395
Commission's Rules to Permit the)
Introduction of Digital Audio Broadcasting)
in the AM and FM Broadcast Services)

COMMENT OF NATIONAL LAWYERS GUILD COMMITTEE
ON DEMOCRATIC COMMUNICATIONS

The Committee on Democratic Communications of the National Lawyers Guild (CDC) submits the following comments in response to the Petition for Rulemaking (RM No. 9395) submitted to the FCC by USA Digital Radio Partners, L.P. (USADR) requesting the introduction of digital audio broadcasting in the AM and FM radio bands.

INTRODUCTION

The Committee on Democratic Communications focuses on the right of all peoples to a system of media and communications based upon the principle of cultural and informational self-determination. The Committee was formed in 1987 to work for First Amendment values and to work for the "Right To Communicate" as an international human right.

The Committee supports independent media organizations and forms of communication, such as micro-radio, public access television, and grassroots cyberspace resources, and works to ensure that they can function free from government or big business control. The Committee offers legal advice and representation to groups and individuals seeking to establish and sustain such forms of communication.

Since 1989 the CDC has actively worked to support the micro-radio movement. The CDC has provided *pro bono* legal support for Free Radio Berkeley as well as a number of other micro-radio broadcasters, trained lawyers in the issues involved in the representation of micro broadcasters, and assisted micro-broadcasters in finding legal representation when challenged by the FCC.

I. New Terrestrial Digital Audio Technology Must Not Impede the Reauthorization of a Microstation Radio Broadcast Service.

The CDC's primary concern is that no terrestrial digital audio broadcasting technology be authorized by the FCC or implemented which would reduce the possibility of authorizing

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and implementing a new Microstation Radio Broadcast Service as has recently been the subject of comments in RM Nos. 9208, 9242, 9246.

The CDC has already addressed these matters to some extent in both our comments and reply comments in RM Nos. 9208, 9242, 9246. However, with the actual proposal by USADR now in front of the Commission, CDC wishes to emphasize our position.

It appears that the Commission is now on the verge of initiating formal proceedings that could lead to the establishment of a microstation service. Such a service would allow a plethora of new voices to take to the air and to mitigate the negative effects of the Telecommunications Act of 1996.

We would strongly object to the introduction of digital technology into the existing broadcast services in such a manner as to preclude a new microradio service. New digital technology might enhance the sound quality of radio and provide additional possibilities for auxiliary secondary services. On their own, these improvements are unobjectionable. However, an improvement in sound quality is of little weight when measured against the First Amendment rights of hundreds of new micro-stations, the thousands of new voices they will bring to the American public, and the scores of communities who are awaiting a new, truly local, community voice.

In 1978 the Commission ceased licensing radio stations of less than 100 watts Effective Radiated Power (ERP) (except in Alaska). The CDC believes, and has argued in our above-noted filings, that this decision by the FCC is both a violation of the First Amendment to the United States Constitution and does not accord with the "public interest" standard of the Communications Act of 1934, as amended. In addition, the rapid growth of "micro-radio" and the nationwide support for micro-radio among the public shows that the FCC's decision to ban low-power radio was simply a mistake. In 1978, the Commission did not believe that there would be a strong demand or need for micro-radio. However, 20 years later it is manifest that there is such a demand and need.

The incredibly rapid consolidation in ownership of electronic media following the Telecommunications Act of 1996 has geometrically exacerbated this problem. Only a few dozen large corporations now control a large percentage of the radio stations in this country and local programming, especially local public affairs programming, has become increasingly scarce.

In response to the above developments, unlicensed "micro-radio" stations have sprung up by the hundreds throughout the United States to serve their neighborhoods and communities with truly local, community based programming. Most importantly, these stations have demonstrated that they can broadcast without causing interference to other users of the spectrum. This clearly demonstrates that the FCC's regulations have been overly restrictive all along, thereby strongly bolstering our argument that the FCC's restrictions in this area are unconstitutional. We cannot believe that the First Amendment could contemplate a regulatory scheme wherein 99.99% of the American people are legally barred from using one of the most effective media, absent an overwhelmingly

compelling reason. The very existence of interference-free microradio demonstrates that no such compelling reason exists.

We request that the Commission demand that any new terrestrial digital audio broadcast technology be designed such that it does not adversely affect the possibility of reauthorizing a micro-radio broadcast service.

II. USADR's Proposal

It is possible that the USADR proposal does, in fact, meet our concerns. USADR states (p.42) that, "The IBOC DAB system should improve broadcasting not only through the digital signal, but also for AM and FM analog reception... Reception is improved because rejection of the adjacent channel interference is greater and noise for the analog signal is lower."

Further on (p. 62), USADR states that, "Results indicate that, with two high-level first-adjacent interferers which would only be present in a short-spaced scenario... the hybrid signal has a margin of 3 dB at the protected contour of a Class B station. Hence, even in an arguably worst-case mobile environment with both digital sidebands impacted by large analog interferers, the system continues to deliver virtual CD-quality digital audio out to a Class B station's protected contour, with margin."

Additionally, USADR states (pp.66-67), " Second adjacent channel interference- ... the digital sidebands of the hybrid second adjacent signal fall well outside the bandwidth of the desired FM signal... As a result, the effects of second-adjacent hybrid and all-digital IBOC signals should be negligible."

These statements appear to indicate that the USADR system may well tolerate interference at least as well, or even better than the current analog system. If so, then there would be no conflict with the reauthorization of a microradio system. If USADR confirms that its system will tolerate the authorization of a significant number of new micro stations our concern would be very substantially abated.

In CDC's previous comments in RM Nos. 9208, 9242, 9246 we requested that the FCC's current second and third adjacency rules be relaxed to more realistic levels in order to further the implementation of the microradio system. We would hope that USADR would confirm that the relaxation of the second and third adjacency rules is not inconsistent with its proposal.

III. IBOC v. Eureka 147

We endorse the general thrust of the comments of the Citizens Media Corps, of Brookline, MA, which are also being submitted in this proceeding. In particular, we agree with their statements regarding the apparent superiority of the Eureka 147 system over an IBOC system. CDC made similar statements in our comments in RM Nos. 9208, 9242, 9246.

We specifically endorse the following statement from the Citizens Media Corps' comments:

"We believe it would be in the best interests of the citizens of the United States for any digital system to be implemented in a new spectrum area, following the guidelines that have been set down by the World DAB Congress. It is by no means a foregone conclusion that new spectrum cannot be found."

If the broadcast radio service were entirely moved to a different portion of the spectrum coincident with the introduction of digital audio technology (as apparently is being done in most of the industrialized world), then the Commission could approach the allocation and engineering of such spectrum with a fresh perspective. Such a perspective could, from the first, design a system in which microbroadcasting and digital audio would be perfectly compatible. A large variety of solutions might open up which, at present, are not readily available.

IV. Conclusion

We believe that a digital audio service in a new spectrum area would be preferable to an IBOC system. However, our primary concern is that whatever terrestrial digital audio system is approved by the Commission, it will not preclude or impede the reauthorization of a micro-station broadcast service.

Respectfully submitted by:

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